IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.1777 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARUNKUMAR T. MAKWANA - Appellant
Versus
INCOME TAX OFFICER - Respondent

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Appearance :
MR KR DIXIT for Appellant.
MR MANISH R BHATT for Respondent.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 30/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The instant appeal filed under Section 260A of the Income Tax Act, 1961 (“the Act” for short) is directed against order dated September 10, 2004 rendered by the Income Tax Appellate Tribunal, Ahmedabad Bench

"SMC A" in ITA No.2179/AHD/2004 with C.O. No.161/AHD/2004, by which the Tribunal has held that under Rule 2BA (vi) of the Income Tax Rules, 1962 ("the Rules" for short), only the lower of the two limits specified therein is exempt and, therefore, only a sum of Rs.35,445/- being the lower limit, would be allowable to the assessee under Section 10(10C) of the Act.

2. The appellant was an employee of M/s.Reliance Industries Limited. He took voluntary retirement under Voluntary Retirement Scheme. On such retirement, he received a sum of Rs.2,21,535/-, which was claimed as exempt under Section 10(10C) of the Act. The Assessing Officer held that the amount receivable by the assessee on his voluntary retirement was worked out on the basis of a scheme which was not in consonance with the requirements specified in Rule 2BA(vi) of the Rules and was, therefore, not allowable.

3. Feeling aggrieved, the appellant preferred appeal before CIT (Appeals), who deleted the addition by making following observations:

> *"2.3 I have considered the contentions of the AO and the claim of the appellant. Rule 2BA*

(vi) prescribes that the amount receivable on voluntary retirement should not exceed (a) the amount equivalent to 3 months' salary for each completed year of service or (b) the amount equivalent to salary at the time of retirement multiplied by the balance months of service left. The provisions do not lay down that the amount representing the lower of the two specified limits (being the amounts equivalent to 3 months' salary for each completed year of service or monthly emoluments at the time of retirement multiplied by the balance months of service left before the date of retirement on superannuation) would be eligible for exemption. Hence, amounts received would be eligible for exemption, if they do not exceed the amount worked out by either of the two methods of computation as provided in Rule 2BA (vi). In the present case, the amount received by the appellant does not exceed the amount equivalent to 3 months' salary for each completed year of service. It also does not exceed the overall prescribed limit of Rs.5,00,000/-. Therefore, the AO was not justified in disallowing the exemption claimed by the Assessee.

2.4 In view of the above, since the amount of Rs.2,21,535/- received by the Appellant on account of VRS does not exceed the time limit of Rs.5,00,000/- prescribed under Section 10(10C) and Rs.4,43,070/- computed in accordance with Rule 2BA (vi), the same is eligible for exemption u/s. 10(10C). Accordingly, the AO is directed to allow exemption of Rs.2,21,535/- u/s.10(10C)".

4. Thereupon, the Revenue filed ITA No.2179/AHD/2004 before the Income Tax Appellate Tribunal, Ahmedabad, whereas the appellant filed cross objections, which were registered as C.O.

No.161/AHD/2004. The Tribunal noticed that the two limits were prescribed in clause (vi) of Rule 2BA of the Rules and that lower of the two limits is allowable because the words “does not exceed the amount equivalent to” precede the two limits prescribed in clause (vi) of Rule 2BA of the Rules. In view of this conclusion, the Tribunal has allowed the lower limit of the amount, i.e. Rs.35,445/- by the impugned order, giving rise to the instant appeal.

5. The appeal was placed for admission hearing before the Division Bench and after hearing the learned counsel for the appellant, the appeal was ordered to be admitted vide order dated January 31, 2006 on the following substantial question of law:

> *“Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was justified in law in invoking Rule 2BA (vi) of the Income-Tax Rules, 1962 in the case of the assessee who is in receipt of the sum from the employer on voluntary retirement?”*

6. This Court has heard Mr.K.R.Dixit, learned counsel for the appellant, and Mr.Manish R. Bhatt, learned counsel for the respondent, at length and in great detail.

7. Before answering the substantial question of law on which the instant appeal is admitted, it would be relevant to notice certain provisions of the Act and the Rules, which are as under:

"10(10C) any amount received or receivable by an employee of-

(i) a public sector company; or
(ii) any other company; or
(iii) an authority established under a Central, State or Provincial Act; or
(iv) a local authority; or
(v) a co-operative society; or
(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or
(vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or
(viia) any State Government; or
(viib) the Central Government; or
(viic) an institution, having importance throughout India or in any State or

States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

On his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees;

***Provided** that the schemes of the said companies or authorities or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed.”*

In view of the above quoted provisions, it is evident that the schemes of voluntary retirement of the companies or authorities, etc. governing the payment of such amount have to be framed in accordance with such guidelines as may be prescribed. The prescription has to

be by the Rules and, therefore, it would be relevant to refer to the provisions of Rule 2BA, which lays down the guidelines for the purpose of Section 10(10C) of the Act. Rule 2BA of the Rules reads as under:

> "**[Guidelines for the purposes of section 10(10C)**
> **2BA.** The amount received by an employee of-
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> *(i) a public sector company; or*
> *(ii) any other company; or*
> *(iii) an authority established under a Central, State or Provincial Act; or*
> *(iv) a local authority; or*
> *(v) a co-operative society; or*
> *(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or*
> *(vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or*
> *(viia) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or*

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

at the time of his voluntary retirement or voluntary separation shall be exempt under clause (10C) of section 10 only if the scheme of voluntary retirement framed by the aforesaid company or authority or co-operative society or University or institute, as the case may be or if the scheme of voluntary separation framed by a public sector company, is in accordance with the following requirements, namely:-

(i) it applies to an employee who has completed 10 years of service or completed 40 years of age;

(ii) it applies to all employees (by whatever name called) including workers and executives of a company or of an authority or of a co-operative society, as the case may be, excepting directors of a company or of a co-operative society;

(iii) the scheme of voluntary retirement or voluntary separation has been drawn to result in overall reduction in the existing strength of the employees;

(iv) the vacancy caused by the

voluntary retirement or voluntary separation is not to be filled up;

(v) the retiring employee of a company shall not be employed in another company or concern belonging to to the same management;

(vi) the amount receivable on account of voluntary retirement or voluntary separation of the employee does not exceed the amount equivalent to three months' salary for each completed year of service or salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation."

8. A conjoint and meaningful reading of the provisions of Section 10(10C) of the Act and Rule 2BA (vi) of the Rules makes it clear that the provisions of Rule 2BA(vi) of the Rules would be applicable to an assessee who is in receipt of the sum from the employer on voluntary retirement. The perusal of Section 10(10C) of the Act read with Rule 2BA makes it very abundantly clear that Section 10(10C) contemplates a one-time payment of the amount not exceeding Rs.5,00,000/-. Different companies can frame different schemes of

voluntary retirement for different classes of their employees. However, the scheme framed has to conform to the guidelines prescribed by Rule 2BA of the Rules. The relevant provisions of voluntary retirement scheme framed by the Reliance Industries Limited have been noted by the Assessing Officer, which are as under:

> (1) An employee will be paid forty-five days' salary for each completed year of service.
>
> (2) Over and above, the company will pay Rs.3,000/- to the employee for the balance years of service as left before the date of superannuation as *ex gratia* payment.
>
> (3) For the purpose of this, pay will be taken as Basic + COLA (Cost of Leaving Allowance) within the meaning of D.A.

While determining the question whether the voluntary retirement scheme framed by the Reliance Industries Limited conforms to the guidelines prescribed by Rule 2BA of the Rules, what is required to be taken into consideration is whether the amount receivable on account of voluntary retirement exceeds the amount equivalent to (1) three months' salary for each completed year of service; or (2) salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation. The

emphasis in Rule 2BA of the Rules is on the amount receivable on account of voluntary scheme which should not exceed the limits prescribed therein. It is not the intention of the legislature that every voluntary retirement scheme framed by the companies must provide that an employee availing benefit of voluntary retirement scheme would be paid an amount either equivalent to (1) three months' salary for each completed year of service or (2) salary at the time or retirement multiplied by the balance months of service left before the date of his retirement on superannuation. On construction of Rule 2BA of the Rules, it is difficult to hold that other manners/methods/modes of payment of amount in the voluntary retirement scheme framed by the companies are forbidden. If a construction is adopted that every voluntary scheme framed by a company must provide for payment of the amount equivalent to (1) three months' salary for each completed year of service or (2) salary at the time of retirement, multiplied by the balance months of service left before the date of retirement of an employee on his superannuation, several employees of several companies would be adversely affected without any fault on their part and the scheme of voluntary retirement would be of no benefit to them. Such a

construction is not called for having regard to the provisions of Section 10(10C) of the Act. The payment of amount contemplated under Voluntary Retirement Scheme framed by the Reliance Industries Limited does not exceed the amount equivalent to (1) three months' salary for each completed year of service or (2) salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation. Under the circumstances, it will have to be held that the scheme of voluntary retirement from service framed by the Reliance Industries Limited conforms to the guidelines prescribed in Rule 2BA of the Rules. Therefore, the substantial question of law framed earlier vide order dated January 31, 2006 is answered in the affirmative.

9. As this Court has come to the conclusion that the provisions of Rule 2BA of the Rules would be applicable to the case of an assessee, who has received the amount on account of voluntary retirement or voluntary separation, it would be necessary to consider the substantial questions of law suggested by the appellant.

10. Subsection (4) of Section 260A of the Act,

inter alia, provides that the appeal shall be heard only on the question so formulated, and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, proviso to the said subsection stipulates that nothing in this subsection shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. Having heard the learned counsels for the parties, this Court is of the opinion that the following substantial questions of law arise for determination of the Court:

> "(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal has substantially erred in law in holding that out of the two limits prescribed by clause (vi) of Rule 2BA of the Income-Tax Rules, 1962, the lower limit is exempt?
>
> (2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal has substantially erred in law in importing words "whichever is lower" in Rule 2BA (vi) of the Income-Tax Rules, 1962?"

What is provided in clause (vi) of Rule 2BA of the Rules is that the amount receivable on account of

voluntary retirement or voluntary separation of the employee should not exceed the amount equivalent to three months' salary for each completed year of service or salary at the time of retirement multiplied by balance months of service left before the date of his retirement on superannuation.

11. The question posed for consideration of this Court is whether the amount representing the lower of the two limits specified in item (vi) of Rules 2BA (the limit being the amount to equivalent to three months' salary for each completed year of service or salary at the time of retirement multiplied by balance months of service left before the date of his retirement on superannuation) is allowable under the scheme of voluntary retirement. Rule 2BA does not provide at all that the amount representing the lower of the two limits specified in clause (vi) of Rule 2BA should be allowed under the scheme of voluntary retirement. If the interpretation on clause (vi) of Rule 2BA of the Rules, as suggested by the Tribunal is accepted, it would amount to re-writing clause (vi) of Rule 2BA by importing the words *“whichever is lower”* therein, which is not permissible to a Court of Law. The words “does not exceed the amount equivalent to”

preceding the two limits specified in Rule 2BA (vi) of the Rules do not suggest at all that the lower of the two limits specified therein, is allowable. On reasonable reading of the provisions of clause (vi) of Rule 2BA, it becomes apparent that clause (vi) does not require that the amount representing the lower of the aforesaid two limits is to be allowed under the scheme of voluntary retirement. The amount receivable by an employee on account of his voluntary retirement can be either of the aforesaid two amounts. However, the amount which will qualify for exemption under Section 10(10C) of the Act will be up to Rs.5,00,000/- only. In fact, Circular No.640 dated November 26, 1992 provides guidelines for the purposes of Section 10(10C) of the Act and clarifies that clause (vi) of Rule 2BA does not require that the amount representing the lower of the two limits is to be allowed under the scheme of voluntary retirement because the amount receivable by an employee on account of voluntary retirement can be either of the aforesaid two amounts, but the amount which will qualify for exemption under Section 10(10C) of the Act will be up to Rs.5 Lakhs only.

12. On plain interpretation of the provisions of

Section 10(10C) of the Act and clause (vi) of Rule 2BA of Rules, this Court is of the opinion that the Tribunal was not justified in allowing the amount representing the lower of the two limits under the scheme of voluntary retirement. Therefore, the two substantial questions of law formulated during the course of hearing of the appeal are answered in the affirmative.

The appeal accordingly stands disposed of with no orders as to costs.

[J.M.PANCHAL, J.]

[BANKIM N. MEHTA, J.]

Rajendra